



Federal Communications Commission
Washington, D.C. 20554

September 12, 2005

DA-05-2441

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ESP Technology Community Broadcasters
110 Green Meadows Circle
Abilene, Texas 79605

Re: Application for a Construction Permit for a New
Noncommercial Educational Television Station
on Channel *19, Colby, Kansas
File No. BNPEDT-20040713AAG

Dear Applicant:

This is with respect to the above-referenced application for a construction permit for a new noncommercial educational television station on reserved Channel *19, Colby, Kansas, filed by ESP Technology Community Broadcasters ("ESP"). We have carefully reviewed the pending application, and find that ESP has failed to establish its qualifications to operate on a channel reserved for educational operation. In this regard, ESP's application fails to demonstrate that its board is representative of the educational, cultural and civic groups of Colby, Kansas. Consequently, we must dismiss the application.

The channels reserved for educational use are intended to serve the educational and cultural broadcast needs of the entire community to which they are assigned. *Fostering Expanded Use of UHF Television Channels*, 2 FCC 2d 527, 542 (1965). The Commission has also recognized that Congress intended the noncommercial educational service to be "a service that is responsive to the overall public as opposed to the sway of particular political, economic, social or religious interests." *Noncommercial Nature of Educational Broadcast Stations*, 90 FCC 2d 895, 900 (1982). Because of the intended nature of the noncommercial educational broadcast service, the Commission requires noncommercial television applicants which are non-profit corporations, such as ESP, to submit "evidence that officers, directors and members of the governing board are broadly representative of the educational, cultural and civic groups in the community." (FCC Form 340, Section II, Paragraph 11(a)). The Commission has explained that:

There is good reason for having a slightly higher standard for a noncommercial, educational television applicant than for an FM applicant, in light of the former's greater spectrum use. In that regard, all 20 reserved FM channels use spectrum that is equal to two-thirds of one television channel, television stations typically cover greater area than their FM counterparts, and fewer televisions than FM channels can be allocated in a given area.

Way of the Cross, 101 FCC 2d 1368, 1371, n.3 (1985); see also *Board of Education of Jefferson County, Kentucky*, 80 FCC 2d 280 (1980); *Report and Order* in MM Docket No. 95-21, 15 FCC Rcd 7386, 7409, n.38 (2000).

We conclude that ESP has failed to meet the Commission's basic eligibility requirements to operate a noncommercial educational television station on a reserved channel in Colby, Kansas. As an initial matter, ESP stated in its application that it is a nonprofit educational organization.¹ However, it provided no information about the applicant to support this claim. Further, ESP failed to provide any information regarding the educational purposes of the proposed station, and how it would be used for the advancement of an educational program. Under the Commission's basic eligibility requirements, non-profit television organizations that are not governments or schools that seek to operate on a reserved channel must establish their basic eligibility by demonstrating that a majority (more than 50%) of their governing board is composed of representative community elements (e.g., businesses, civic groups, professions, religious groups, schools, government).² According to the application filed by ESP, its board is comprised of two directors, both of whom reside in Abilene, Texas. Moreover, ESP provided no evidence indicating that these individuals are representative of any educational, cultural and civic groups in Colby, Kansas.³

Accordingly, because ESP failed to establish its basic eligibility to operate on a channel reserved for noncommercial educational operation, the application for a construction permit for a new noncommercial educational television station on reserved Channel *19, Colby, Kansas, filed by ESP Technology Community Broadcasters (BNPEDT-20040713AAG) IS HEREBY DISMISSED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Smoky Hills Public Television Corp.

¹ FCC Form 340, Section II, Question 2.

² *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, *Report and Order*, 15 FCC Rcd 7386, 7448 n.38 (2000).

³ See *In re Application of WQED Pittsburg*, 15 FCC Rcd 202, 229, n.91 (1999) (Excluding two out of twelve directors of assignee's board for purposes of satisfying the "broadly representative" requirement, because they lived outside of the community of license. Furthermore, the Commission found that of the remaining ten local directors, four were not broadly representative of the community due to their lack of formal involvement with any local organizations.)